

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

RICHARD RATCLIFF and BONNIE SWAN,

Plaintiffs-Appellees,

and

MICHAEL JANDERNOA,

Plaintiff,

v

TIMOTHY P. MCAULIFFE,

Defendant-Appellant.

---

UNPUBLISHED

February 7, 2003

No. 229756

Allegan Circuit Court

LC No. 97-021475-CH

Before: Owens, P.J., and Cavanagh and Neff, JJ.

PER CURIAM.

Defendant appeals as of right from a judgment in favor of plaintiffs on their adverse possession claims following a bench trial. We affirm.

Plaintiffs own property that abuts Chicago Avenue, one of several roadways originally platted in 1896, which is located in the Chicago Addition to Macatawa Park. In 1992, an injunction was issued enjoining defendant's principal, the T.L. Leisure Company, from using Chicago Avenue, after the trial court held that Chicago Avenue was not a public road. In October 1997, plaintiffs instituted this trespass action against defendant. In response, defendant claimed that, in June of 1997, his principal and partner to the T.L. Leisure Company, Forest Beach Joint Venture, acquired title to "all roads and walks located in the Plat of Chicago Addition," including Chicago Avenue, by quit claim deed. Thereafter, plaintiffs amended their complaint to include adverse possession claims against defendant. Following a bench trial, the court held that plaintiffs failed to establish their trespass claims but that they both established their claims of adverse possession against defendant. Accordingly, the trial court entered a judgment in favor of plaintiffs, vesting them with title in fee simple to the areas of Chicago Avenue immediately adjacent and contiguous to plaintiffs' lots. Defendant's motion for a new trial was denied and this appeal followed.

On appeal, defendant argues that the trial court erred in concluding that plaintiffs acquired title to Chicago Avenue by adverse possession. We disagree. This Court reviews the

trial court's findings of fact in a bench trial for clear error and reviews de novo its conclusions of law. MCR 2.613(C); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001).

To succeed on an adverse possession claim, the claimant must establish by clear and cogent proof that his possession was actual, visible, open, notorious, exclusive, hostile, under cover of claim or right, continuous, and uninterrupted for the statutory period. *West Michigan Dock & Market Corp v Lakeland Investments*, 210 Mich App 505, 511; 534 NW2d 212 (1995); *Gorte v Dep't of Transportation*, 202 Mich App 161, 170; 507 NW2d 797 (1993). Further, the true owner must have actual knowledge of the adverse possession, or, the possession must be so notorious as to raise the presumption to the world that the possessor claims ownership. *Ennis v Stanley*, 346 Mich 296, 301; 78 NW2d 114 (1956).

Here, the trial court's findings of fact were entirely consistent with the record evidence. See MCR 2.613(C). Plaintiffs' evidence established that their possession of Chicago Avenue was actual, visible, open, notorious, exclusive, and under cover of claim or right in that fences and concrete barriers, landscaping, and signage existed, would be obvious to the casual observer, and would reasonably prevent anyone from using Chicago Avenue as a road. Plaintiffs' possession was hostile because they used Chicago Avenue in a manner "inconsistent with the right of the owner, without permission asked or given," so as to manifest an intent to claim title in that they prevented anyone from using Chicago Avenue as a roadway or even as a means to access the beach. See *Mumrow v Riddle*, 67 Mich App 693, 698; 242 NW2d 489 (1976). Further, their possession was continuous and uninterrupted for the statutory period as evidenced by the fact that no one had used Chicago Avenue as a roadway in about sixty years. Defendant failed to present any evidence to challenge either plaintiffs' testimony or photographic evidence.<sup>1</sup> In sum, plaintiffs presented clear and cogent proof that they possessed Chicago Avenue and divested defendant of his purported title by adverse possession.

Further, we decline to address defendant's claim of judicial bias because defendant did not properly preserve or present this issue for appeal. Defendant did not move for the trial court's disqualification pursuant to MCR 2.003, did not object to the alleged misconduct, and did not include this issue in his motion for a new trial. See *Meagher v Wayne State Univ*, 222 Mich App 700, 725; 565 NW2d 401 (1997). In addition, defendant has failed to support his appellate argument with citation to any supporting legal authority. See *Silver Creek Twp v Corso*, 246 Mich App 94, 99; 631 NW2d 346 (2001). In any event, after review of the record, we conclude that this issue is without merit.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Mark J. Cavanagh

---

<sup>1</sup> Defendant's claim of "cotenancy" is unexplained and unfounded. Plaintiffs and defendant were not co-owners of Chicago Avenue and did not have a possessory interest in common.